

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7234 of 1995

with

CIVIL APPLICATION NO. 6916 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No

KHANBIBI WD/O MAULANA MOHMAD SAIDKHAN PATHAN

Versus

SUNNI MUSLIM VAKAF COMMITTEE THRO' TRUSTEES

Appearance:

MR MID PATEL & MR.GIRISH PATEL for Petitioners

MR. M.B. FAROOQUI for respondents

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 09/10/97

ORAL JUDGEMENT

1. Admit. Mr. M.B. Farooqui waves service of admission for the Respondents. Today Mr. MID Patel has informed the court that he alone represents the appellants and Mr. Girish Patel is not appearing for the appellants. It may be stated that at the initial stage

when Notice was issued, Mr. Girish Patel appeared for Mr. MID Patel and his only request was that since the Pesh Imam has expired his widow may be permitted to live in the small place as she would be rendered houseless if she is asked to vacate the premises. Mr. M.B. Farooqui for respondents thereupon applied for some time to consult the respondents. Today at the hearing of the First Appeal, Mr. MID Patel who is appearing for the appellants states that only he appears for the appellants and Mr. Girish Patel does not appear for the appellants and he being the practising advocate would represent the case of the appellant himself.

2.. The first appellant being widow of Maulana Mohmad Saiedkhan Pathan and second and third opponents being the major son and daughter of Mohmad Saiedkhan Pathan are aggrieved by the judgment and decree passed by the City Civil Judge at Ahmedabad in Civil Suit No. 4957 of 1984 dated 19th October, 1995.

3. It is not disputed before this Court that the respondents before this Court are the trustees of Sunni Muslim Wakf Committee and there is a Dargah of the said Wakf Committee known as Char Toda Kabrasthan in Ahmedabad and there is a Mosque known as Nani Masjid in the said Kabrashtan. There is one room situated in the said Masjid which is known as "Hujra" and the said Hujra is meant for use and occupation of Pesh Imam who is appointed by the Wakf Committee and that said Hujra is to be occupied by Pesh Imam so long as he continues on the post of Pesh Imam of the Masjid. It is undisputed that one Maulana Mohmed Saiedkhan Hasankhan Pathan was appointed as Pesh Imam and had to perform religious rites such as Hujra as Pesh Imam and for that purpose premises were provided to him in the compound of the said Masjid till his life time or till he continues on the post of Pesh Imam. No rent or licence fee whatsoever was charged from him for occupation of the said Hujra and nothing was charged from Mohmed Saiedkhan Hasankhan Pathan till he died on 9th August 1983. However, after his death, his widow and his major son and major daughter did not vacate the premises which was given to the deceased Pesh Imam and they have unauthorisedly continued to remain in possession thereof without premission of the Wakf Committee and, therefore, the suit was filed to recover the vacant possession after giving the notice.

4. The suit was resisted by the widow of the deceased by filing written statement at Exhibit 20 and various contentions were raised and based on the pleadings, issues were framed at Exhibit 25. It is not a

matter of dispute before this court that the room known as Hujra was given to the deceased Pesh Imam Mohmed Saiedkhan Hasankhan Pathan who was then the Pesh Imam for the aforesaid Mosque without charging any rent or licence fee as condition of service or in lieu of employment as Pesh Imam. The trial court after considering the oral as well as documentary evidence, came to the conclusion that the widow of the deceased Pesh Imam and his major son and major daughter have no right to retain possession of the room which was allotted to deceased Pesh Imam and that his widow and his major son and major daughter were illegally and unauthorisedly occupying such premises and that it became impossible for the Wakf Committee to provide place to the newly appointed Pesh Imam with the result that the religious rites which are to be performed by Pesh Imam are adversely affected. The regular function of the Pesh Imam is to offer prayers five times in a day and to offer Namaz-e-Janaza and the prayers which are specifically offered on Jumaday i.e. Friday prayer. The original Pesh Imam to whom the aforesaid premises were allotted, namely, Maulana Mohmed Saiedkhan Hasankhan Pathan having expired, now his widow, major son and major daughter have come forward to claim the right to occupy the other portion which is marked in the map of the Court Commissioner and the kaccha copy of such map is also shown to the Court. The portion admeasuring around 38 sq. yards i.e. shown in the blue colour is already in possession of the widow of deceased Pesh Imam and according to Mr.M.B.Farooqui, there is encroachment made in 20 square yards of land, which is shown in green in the map, by the widow of deceased Pesh Imam and the major son and major daughter, which is required to be immediately removed. The said map is taken on record so as to form part of the proceeding of this judgment and is ordered to be annexed to the judgment. On the other hand, the learned counsel appearing for the widow of the deceased Pesh Imam and his one major son and one major daughter has submitted that from the evidence which is recorded on which he has placed reliance, a clear right has accrued to the widow as well as major son and daughter to occupy the premises even though the head of the family who was performing duties as Pesh Imam has expired. The evidence of Mustak Ahmed Huseein Miya Kazi, who is the employee of the Wakf Committee, is relied upon by the widow of the deceased Pesh Imam and his major son and major daughter and based on such evidence he has tried to show that the place in dispute is known as Hujra or Hujro and that in the mosque the deceased was performing the duties as Pesh Imam. The salary of Pesh Imam is being paid by the trust and Hujra is being provided for his residence for which no rent or licence

fee is charged. He has also stated that so long as Pesh Imam lives and continues his service, he is entitled to occupy the place known as Hujra and on his death or as and when he leaves the work of Pesh Imam, he has to vacate the place which is provided to him as Pesh Imam. The learned Advocate has relied upon the fact that deceased Maulana Mohmed Saiedkhan Pathan was given possession of Hujra as Pesh Imam and a writing was executed which is produced at Exhibit 21. He also submitted that over and above Hujra place, the deceased Pesh Imam was provided other place which is shown in the document marked 31/6 which is ultimately exhibited at 92 and such place was provided on leave and licence basis by charging Rs. 15 per month. What value is to be attached to such writing is a matter to be considered more particularly when court is concerned with the place which is allotted to Pesh Imam for performing certain religious rites and when Wakf Committee has no intention of giving such place permanently or in lieu of any services rendered, in my opinion, the evidence of this witness cannot be attached any importance as he was not the employee of the Wakf Committee at the time when the deceased Pesh Imam was provided the place in question. Even otherwise, the major son and major daughter of the deceased Pesh Imam cannot claim any right to reside in the place which was allotted to Pesh Imam or which is known as Hujra place. On marriage of the major son or marriage of the major daughter, even further unauthorised rights might be claimed which would be quite inconsistent with the solemnity of the duties to be performing by Pesh Imam. In fact, when Pesh Imam is performed certain religious rites, and when Wakf Committee has no intention of giving any place to the members of the family of Pesh Imam permanently or in lieu of any service rendered, the court should be slow in interfering with the religious solemnity which is attached to the post of Pesh Imam when he is permitted to occupy Hujra place.

5. Having given my anxious thought and consideration to the aforesaid evidence and more particularly to the cross-examination of the witness, it cannot be said that any better right than that of Pesh Imam was created in favour of deceased Maulana Mohmed Saiedkhan Hasankhan Pathan and neither his widow nor his major son or major daughter can create or claim any right to permanently reside in the place of Hujra which was allotted to them. The court shall have also to keep in mind that it is dealing with the rights of minority community and more particularly religious ceremonies and rites to be performed by Pesh Imam in a Mosque and if no new Pesh

Imam is permitted to occupy the place of Hujra and to perform the duties which are otherwise required to be performed, there would be unnecessary interference with the rights of the minority community and more particularly the religious ceremonies and rites to be performed as Pesh Imam in the Mosque which is owned by the Wakf Committee. In my opinion, the learned City Civil Judge was quite alive to his duty and he has very correctly interpreted the evidence and has given due weight to the oral as well as documentary evidence. Mr.M.B.Farooqui who is appearing before the Court on behalf of the Wakf Committee has clearly stated that Wakf Committee has no intention to deprive the widow only of the right of residence which she is enjoying on the portion admeasuring 38 square yards and which is marked in the map as A-B-C-D and no right is conceded in favour of major son or major daughter.

6. In view of the aforesaid fair and reasonable stand taken by the Wakf Committee, I do not find any substance in the present First Appeal and the decree passed by the learned City Civil Judge dated 19th October, 1995 is required to be confirmed and is hereby confirmed.

7. In the result, the First Appeal is rejected. Notice is discharged. There shall be no order as to costs.

8. In case, the undertaking to the following effect is filed on oath in this Court within 30 days from today, the possession of the said portion i.e. Hujra shall not be disturbed, failing which, it will be open to the Wakf Committee to execute the decree and take over possession. The undertaking shall contain the following stipulations:

- (i) The widow of the deceased Pesh Imam and his major son and major daughter shall hand over peaceful and vacant possession of Hujra to the Wakf Committee within four weeks from today, failing which, it will be open to the Wakf Committee to execute the decree and to take over the possession.
- (ii) The widow of the deceased Pesh Imam and his major son and major daughter shall also undertake to close the door which they have illegally open having direct access to Hujra and that shall be done at the earliest i.e. within two weeks from today.

(iii) The widow of the deceased Pesh Imam may apply for the separate electric meter for the place which she is permitted to be retained and Wakf Committee shall not object to electric supply being provided to her.

(iv) In case, the aforesaid undertaking is not filed on oath in this Court, the judgment and decree of the trial court shall be executed at the expiry of the period of four weeks granted by this Court.

7. In view of the aforesaid, the stay granted by this court in the Civil Application No.6916 of 1995 shall stand vacated on the expiry of the aforesaid period and on undertaking on affidavit being filed in this Court within the stipulated time. Civil Application stands disposed of accordingly. Notice is discharged.

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